

November 8, 2010

Marty Gardner
NEPA Coordinator
Nez Perce National Forest
104 Airport Road
Grangeville, ID 83530

Sent Via Email

Dear Mr. Gardner,

The following comments on a whole list of CEs are on behalf of Friends of the Clearwater and Alliance for the Wild Rockies. There are questions and concerns with the proposed CEs. Some of them meet the requirements for EAs.

Chucker's Lode Exploration

The scoping letter provides little information on important aspects of this proposal so it is impossible to tell if an EA or EIS is needed. First, water quality issues surrounding the exploration need to be evaluated. The proposal could apply "excess water" on the land. The concern is this is a discharge under the Clean Water Act and it requires a discharge permit (NPDES permit). Even if the pH is normal, the water could contain pollutants. This is important because the Fall Creek area is near the South Fork Clearwater, which contains listed fish species.

Furthermore, where would the water come from for the drilling? That is an issue that needs to be addressed. The location of the test holes also needs to be addressed. Are they on the existing roadbed or elsewhere?

The issue of claim validity is important. This type of work, if small (again, the scoping letter lacks detail), would seem to be more exploration previous to staking a claim. This is important because the reasonableness of the proposed action needs to be adequately considered.

Activity or facilities that are "reasonably incident" will vary depending on the stage of mining activity. Through case law that has evolved since 1955, the reasonably incident standard has been interpreted to include only activity or facilities that are an integral, necessary, and logical part of an operation whose scope justifies the activity or facilities. Activities that are "reasonably incident" would be expected to be closely tied to, and be defined within, what would be reasonable and customary for a given stage of mining activity. Such levels of activity would include initial prospecting, advanced exploration, predevelopment, and actual mining. Each stage is defined by an increasing level of data and detail on the mineral deposit that, in total, contribute to an increasing probability that the deposit can be mined profitably. Each stage also has an increasing impact on the land.

The logic of sequencing is also obvious to the Forest Service whose charge is the management of surface resources: Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible on lands in the National Forest System “to regulate their occupancy and use to preserve the forest thereon from destruction.” Equally important, the principle has been articulated by the 9th Circuit Court in *United States v. Richardson*, 599 F.2d 290 (9th Cir. 1979), *cert. denied*. The Court clearly articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on lands in the National Forest System must be related to a logical step in that process and the steps must be in the proper sequence.

The scoping letter lacks enough information to make that determination. Specifically, since the information in the scoping letter is so limited, this activity might be the kind that precedes the staking of a claim. If that is the case, then it is out of the proper sequence and it is questionable whether the claimant has made the discovery of a “valuable mineral deposit” on each claim to be used by the applicant. (30 U.S.C. 22). A mining claim location does not give presumption of a discovery. (*Ranchers Exploration v. Anaconda*). “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (*Cole v. Ralph*, 252 U.S. 286, 294-96 (1920)).

Simply put, the scoping letter provides too little information. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the need for water during drilling, the possible discharge of water from the adit exploration, and the lack of information about the location of the proposed drilling holes.

Max #2 Placer

This activity would occur within the RHCA on Ozark Creek, which is part of the Little Slate Creek watershed. Little Slate Creek is a crucial anadromous fishery, according to the EAWS. As such, a CE is inadequate.

The scoping letter is unclear as to how the point source discharge might affect the stream and how much, if any, water will be taken from the stream. Will the amount affect fish during low flows? The NEPA documents need to address whether these are point sources under the Clean Water Act where NPDESs are required. It would seem an NPDES is required in both cases as the Federal courts have expressly held that the outfall from in-stream placer mining equipment is a point source discharge under the CWA that cannot proceed without an NPDES permit. (*Trustees for Alaska*, 749 F.2d 539 (9th Cir. 1984)).

Under the CWA, a new point source discharge affecting a parameter associated with the 303(d) listing is prohibited. This nondegradation standard applies since any new discharge affecting these parameters would by definition violate the requirement that: “existing instream water uses and the level of water necessary to protect the existing uses shall be maintained and protected.” (40 CFR 131.12(a)(1)). (NOTE: this antidegradation standard means that no degradation will occur--not some degradation can occur as long as the beneficial uses are protected and standards are met. See, *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 114 S.Ct 1900(1994)).

In any case, the 20’ buffer is too little to prevent runoff and to prevent direct impacts to wetlands. MM2 of INFISH and PACFISH standards require that structures and other impacts be located outside of riparian habitat conservation areas (RHCAs). The Forest Service cannot meet its duty under the Clean Water Act (CWA, see also 36 CFR 228.8) to ensure that the project will comply with the CWA without an understanding of the specific nature of the discharges. Also, who will determine whether the 20-foot

buffer is being followed and will that person be an expert in hydrology so the issue of wetlands can be properly assessed?

How large would the ten test pits be? This is important information.

Thus, an EA needs to clearly document several things. First, how does the proposal comply with the Clean Water Act Section 401? In Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *4 (D. Or. 2006) the court held the claimant and agency needed to comply with this section. Second, the EA needs to clearly demonstrate how this would comply with section 402 of the Clean Water Act and the requirement for an NPDES. Impacts within 20 feet of the stream don't comply with this law. Third, the EA needs to demonstrate how this complies with section 404 of the CWA, specifically how does working within 20 feet of a stream not affect wetlands and who determines the wetland? Fourth, the EA needs to demonstrate compliance with sections 303 and 313 of the CWA. Fifth, the EA needs to demonstrate compliance with the ESA for listed fish species. It is hard to see how this project can go forth given how far within the RHCAs development is proposed to take place. The Forest Service must consult on listed species. Sixth, the EA needs to show that the requirements of NFMA are met in regard to other native salmonids such as Westslope cutthroat trout or MIS species dependent upon aquatic or riparian environments. Monitoring information for MI and TE species must be included in the EA and the EA must demonstrate how the project meets forest plan requirements for fish habitat and water quality (Appendix A).

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)). The EA needs to clearly analyze this issue.

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destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

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Simply put, the scoping letter provides too little information. The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of RHCAs and whether this complies with PACFISH, the CWA, and forest plan standards.

Bear Track #2 Placer

Like the Max #2 Placer, this activity would occur within an RHCA. In this case, Meadow Creek is an important tributary to the Wind River. The Wind River is an anadromous fish stream. A CE is inadequate.

The scoping letter is unclear as to how the point source discharge might affect the stream. It does not note water will be taken from the stream. Will the amount affect fish during low flows? The NEPA documents need to address whether these are point sources under the Clean Water Act where NPDESs are required. It would seem an NPDES is required in both cases as the Federal courts have expressly held that the outfall from in-stream placer mining equipment is a point source discharge under the CWA that cannot proceed without an NPDES permit. (Trustees for Alaska, 749 F.2d 539 (9th Cir. 1984)).

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How large would the six test pits be? This is important information.

Thus, an EA needs to clearly document several things. First, how does the proposal comply with the Clean Water Act Section 401? In Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *4 (D. Or. 2006) the court held the claimant and agency needed to comply with this section. Second, the EA needs to clearly demonstrate how this would comply with section 402 of the Clean Water Act and the requirement for an NPDES. Impacts within 20 feet of the stream don't comply with this law. Third, the EA needs to demonstrate how this complies with section 404 of the CWA, specifically how does working within 20 feet of a stream not affect wetlands and who determines the wetland? Fourth, the EA needs to demonstrate compliance with sections 303 and 313 of the CWA. Fifth, the EA needs to demonstrate compliance with the ESA for listed fish species. It is hard to see how this project can go forth given how far within the RHCAs development is proposed to take place. The Forest Service must consult on listed species. Sixth, the EA needs to show that the requirements of NFMA are met in regard to other native salmonids such as Westslope cutthroat trout or MIS species dependent upon aquatic or riparian environments. Monitoring information for MI and TE species must be included in the EA and the EA must demonstrate how the project meets forest plan requirements for fish habitat and water quality (Appendix A).

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v. Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)). The EA needs to clearly analyze this issue.

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destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.

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Imperial Creek Placer

This activity would occur within the RHCA on Imperial Creek, In this case, Meadow Creek is an important tributary to the Wind River. The Wind River is an anadromous fish stream. A CE is inadequate.

The scoping letter is unclear as to how the point source discharge might affect the stream and how much, if any, water will be taken from the stream. Will the amount affect fish during low flows? The NEPA documents need to address whether these are point sources under the Clean Water Act where NPDESs are required. It would seem an NPDES is required in both cases as the Federal courts have expressly held that the outfall from in-stream placer mining equipment is a point source discharge under the CWA that cannot proceed without an NPDES permit. (*Trustees for Alaska*, 749 F.2d 539 (9th Cir. 1984)).

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In any case, the 20” buffer is too little to prevent runoff and to prevent direct impacts to wetlands. MM2 of INFISH and PACFISH standards require that structures and other impacts be located outside of riparian habitat conservation areas (RHCAs). The Forest Service cannot meet its duty under the Clean Water Act (CWA, see also 36 CFR 228.8) to ensure that the project will comply with the CWA without

an understanding of the specific nature of the discharges. Also, who will determine whether the 20-foot buffer is being followed?

This proposal has 50 test holes. That is significantly more than the preceding two projects.

Thus, an EA needs to clearly document several things. First, how does the proposal comply with the Clean Water Act Section 401? In Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, *4 (D. Or. 2006) the court held the claimant and agency needed to comply with this section. Second, the EA needs to clearly demonstrate how this would comply with section 402 of the Clean Water Act and the requirement for an NPDES. Impacts within 20 feet of the stream don't comply with this law. Third, the EA needs to demonstrate how this complies with section 404 of the CWA, specifically how does working within 20 feet of a stream not affect wetlands and who determines the wetland? Fourth, the EA needs to demonstrate compliance with sections 303 and 313 of the CWA. Fifth, the EA needs to demonstrate compliance with the ESA for listed fish species. It is hard to see how this project can go forth given how far within the RHCAs development is proposed to take place. The Forest Service must consult on listed species. Sixth, the EA needs to show that the requirements of NFMA are met in regard to other native salmonids such a Westslope cutthroat trout or MIS species dependent upon aquatic or riparian environments. Monitoring information for MI and TE species must be included in the EA and the EA must demonstrate how the project meets forest plan requirements for fish habitat and water quality (Appendix A).

It should be emphasized the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear in ruling that prohibitions under the ESA must be enforced, even to deny mining operation and: "of course, the Forest Service would have the authority to deny any unreasonable plan of operations or plan otherwise prohibited by law. E.g., 16 U.S.C. 1538 (endangered species located at the mine site). The Forest Service would return the plan to the claimant with reasons for disapproval and request submission of a new plan to meet the environmental concerns." (Havasupai Tribe v. U.S., 752 F.Supp. 1471, 1492 (D. Az. 1990) affirmed 943 F.2d 32 (9th Cir. 1991) cert. denied 503 U.S. 959 (1992); See also Pacific Rivers Council v. Thomas, 873 F.Supp. 365 (D. Idaho 1995); Pacific Rivers Council v Thomas, 30 F.3d 1050 (9th Cir 1994) cert. denied 115 S.Ct. 1793 (1995)). The EA needs to clearly analyze this issue.

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Steamboat Creek Placer

This activity would occur within the RHCAs. In this case, Meadow Creek is an important tributary to the Wind River. The Wind River is an anadromous fish stream. A CE is inadequate.

This is larger than the preceding proposals. This one calls for 50 test pits 12 by 12-feet in size. That is significant

The scoping letter is unclear as to how the point source discharge might affect the stream and how much, if any, water will be taken from the stream. Will the amount affect fish during low flows? The NEPA documents need to address whether these are point sources under the Clean Water Act where NPDESs are required. It would seem an NPDES is required in both cases as the Federal courts have expressly held that the outfall from in-stream placer mining equipment is a point source discharge under the CWA that cannot proceed without an NPDES permit. (*Trustees for Alaska*, 749 F.2d 539 (9th Cir. 1984)).

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All Placer Projects

These placer project would have cumulative impacts in and around the Florence area. There are three of them in the Meadow Creek watershed alone, which flows into the Gospel Hump Wilderness. The cumulative impacts must be considered.

Wind Towers

These projects may fall within the framework of a Cs. However, we do have some concerns about the potential impacts. Would there be propellers on the towers? How long would they be in place? What are the expected impacts to birds?

North Fork Campground

We seriously question whether this can be done as proposed without violating the forest plan. Violations of the Endangered Species Act could occur if trees are to be felled within the PACFISH and INFISH RHCAs. The campground is close to Slate Creek. How will this project meet forest plan and other requirements for protection of RHCAs and listed species? Wouldn't it make more sense to prohibit the heavy equipment if this project goes forward and leave the logs on the ground? Removing trees within RHCAs does affect attainment of RMOs. The exception for safety trees is not intended to apply to large-scale projects with many trees in one area.

Attached at the end of this comment is a letter on the problems associated with the Jerry Johnson campground hazardous tree removal. That letter is part of this comment. We suggest you review it prior to making any decision on this proposal.

Clear Creek Culverts

This project appears to fit within the scope of a CE. However, we have some questions. Given the scarcity of funds, are these the highest priority culverts for replacement on the Clearwater and Nez Perce National Forests? If not, why is this proposal moving forward ahead of other more important projects? If so, what was process used to prioritize culvert replacement?

Browse Logging in Winter Range

MAP to FOL

The scoping letter provides inaccurate and confusing information about this proposal. First, were are Townships 32 and 33 West? Where is the Middle Fork of the Lochsa River?

Without a map, it is impossible to determine the effects of this action on the wild and scenic river corridor. It is also impossible to tell if the proposal would occur in any roadless areas as the scoping letter does not mention roadless areas. The scoping letter does mention RNAs and the Lochsa RNA is located in the North Lochsa Slope roadless area. Please send to Friends of the Clearwater a map of this proposal.

Cutting 1,000 acres could have a significant impact. This project needs to be evaluated in an EA.

Tree Planting at Powell on Decommissioned Roads

This proposal seems to fit within the framework of a CE. Will seedlings from nearby stock be used in the plantings?

Blackfoot Telephone

We have a few questions about this proposal. Is this the same service used by the Forest Service? If not, are there redundant lines to Lochsa Lodge and the Powell Ranger Station? Shouldn't an archeological clearance be done before building construction on the Powell compound?

Clear Creek Pre-commercial Thinning

We have several questions and comments about this proposal. Are these areas the most important for commercial thinning of the 27,000 identified in the January 23, 2009 scoping notice? If not, why are they being proposed now? Please provide documentation that shows these stands are the priority versus other stands.

How can even-aged "regeneration harvests" that are only 15 to 25 years old contain MA 20 old growth habitat?

RHCAs are of serious concern. There should be no thinning in these areas. Current policy does not allow logging in RHCAs so pre-commercial thinning is not needed within RHCAs for eventual logging.

Any forest condition that is maintained through intense mechanical manipulation is not maintaining ecosystem function. We request detailed disclosure of the historical data used to arrive at the assumptions in the scoping letter. We don't believe the proposed management activities are designed

to foster the *processes* that naturally shaped the ecosystem and resulted in a range of natural structural conditions, they are merely designed to create structural conditions at a point in time, which may not even be natural. Even that goal won't be met by this project. Generally, past process regimes are better understood than past forest structure. How are you factoring in fire, insects, tree diseases, and other natural disturbances in specifying the structural conditions you assume to be representative of the historic range?

Many adverse consequences to soil, ecological processes, wildlife, and other elements of the natural environment are associated with logging, including thinning. (Ercelawn, 1999; Ercelawn, 2000.) For example: "Salvage or thinning operations that remove dead or decayed trees or coarse woody debris on the ground will reduce the availability of forest structures used by fishers and lynx." (Bull et al., 2001.) Since this is a thinning project the impacts on lynx must especially be considered.

Please disclose, using tables and maps, the amounts, locations, sizes, and connectivity of all old-growth stands in the project area. Disclose whether it is actual old growth (meets all criteria) or whether it is "recruitment" old growth. Disclose whether or not you have compared all stands proposed for thinning to the old-growth criteria. Please disclose the methodology used to identify each stand as old growth, recruitment old growth, or not old growth.

For the proposal to be consistent with the Forest Plan, enough habitat for viable populations of old-growth dependent wildlife species is needed over the landscape. The Nez Perce National Forest has a spotty record at best in insuring the viability of MIS and TES species as documented in the forest plan monitoring reports. Unfortunately, region-wide the FS has failed to meet Forest Plan old-growth standards, does not keep accurate old-growth inventories, and has not monitored population trends in response to management activities as required by Forest Plans and NFMA (Juel, 2003).

Please include in your analysis the possible effects of noxious weed introduction on Sensitive plant populations and other components of biodiversity. Please include in the analysis the results of monitoring of noxious weed infestation from past management actions in this drainage.

Please disclose in the NEPA document the results of up-to-date monitoring of fish habitat and watershed conditions, as required by the Forest Plan. Discuss the actual effectiveness of proposed BMPs in preventing sediment from reaching watercourses in or near the analysis area. This is especially important as felling will occur in RHCAs. Please fully analyze and disclose cumulative impacts on TES fish species and soil productivity.

It is extremely important the FS disclose the environmental baseline for watersheds. Generally, this means their condition before development or resource exploitation was initiated. For example, the baseline condition of a stream means the habitat conditions for fish and other aquatic species prior to the impacts of road building, logging, mining, etc. Therefore, proper disclosure of baseline conditions would mean estimates of stream stability, pool frequency conditions, water temperature range—essentially the values of Riparian Management Objectives along with such parameters as sediment levels. When such information is provided, comparison with the current conditions (after impacts of development) will aid in the assessment of cumulative effects of all alternatives.

For every project proposal, it is important that the results of past monitoring be incorporated into planning. All Interdisciplinary Team Members should be familiar with the results of all past monitoring

pertinent to the project area, and any deficiencies of monitoring that have been previously committed to. For that reason, we expect that the following be included in the NEPA documents or project files:

- A list of all past projects (completed or ongoing) implemented in the proposed project area watersheds.
- The results of all monitoring done in the project area as committed to in the NEPA documents of those past projects.
- The results of all monitoring which has been done in the proposed project area as a part of the Forest Plan monitoring and evaluation effort.
- A description of any monitoring, specified in those past project NEPA documents or the Forest Plan for proposed project area, which has yet to be gathered and/or reported.

Please disclose the name of development projects (implemented during the life of the Forest Plan) whose analysis area(s) encompass the areas to be thinned under this proposal (including any actions that would have a cumulative impact on ECA or other factors). Please disclose if the FS has performed all of the monitoring and mitigation required or recommended in any NEPA documents, and the results of the monitoring.

Before approving a further set of activities, the agency must complete the revision of the Forest Plan in order to elucidate a truly sustainable ecological vision of forest management. The agency proposes to continue to implement a Forest Plan that has in many ways expired, both legally and ecologically. Project-level decisions based upon an out-of-date Forest Plan and in an absence of adequate monitoring are inadequately informed, are likely illegal, and will result in more of the same kind of damage that has occurred continuously under the first Forest Plan. For the record, the Forest Plan is now 23 years old.

Cumulative effects are defined by NEPA at 40 C.F.R. 1508.7 as:

... the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonable foreseeable future action regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

It has been well established that site-specific Biological Evaluations (BEs) or Biological Assessments (BAs) must be prepared for all actions such as this. Further, the Forest Service Manual requires that BEs/BAs consider cumulative effects. The Forest Service Manual states that project BEs/BAs must contain "a discussion of cumulative effects resulting from the planned project in relationship to existing conditions and other related projects" [FSM 2672.42(4)].

References cited:

Bull, E., et al. 2001. Effects of Disturbance on Forest Carnivores of Conservation Concern in Eastern Oregon and Washington. Northwest Science. Vol 75, Special Issue, 2001.

Ercelawn, A. 1999. End of the Road -- The Adverse Ecological Impacts of Roads and Logging: A Compilation of Independently Reviewed Research. 130 pp. Natural Resources Defense Council. New York. Available online at: <http://www.nrdc.org/land/forests/roads/eotrinx.asp>

Ercelawn, A. 2000. Wildlife Species and Their Habitat: The Adverse Impacts of Logging -- A Supplement to End of the Road. 41 pp. Natural Resources Defense Council. New York. Available online.

Juel, Jeff, 2003. Old Growth at a Crossroads: U.S. Forest Service Northern Region National Forests noncompliance with diversity provisions of their Forests Plans and the National Forest Management Act Regulations. The Ecology Center Incorporated. 27p. August 2003.

Sincerely,

Gary Macfarlane
Friends of the Clearwater
PO Box 9241
Moscow, ID 83843
--and for—
Alliance for the Wild Rockies

Attachment 1
Larry Dawson' Supervisor
Clearwater National Forest
12730 Highway 12
Orofino, ID 83544

May 10, 2004

Dear Larry,

We, the undersigned organizations, are deeply concerned with and confused by the Jerry Johnson Campground Repair and Rehabilitation Project. Numerous violations of federal and state law, as well as Forest Service policy, occurred with respect to this project and we are seeking a firm commitment from you that appropriate actions will be taken to ensure that such violations do not continue to occur on the Clearwater National Forest.

On April 23, 2004, Jonathan Oppenheimer, Larry McLaud, Arthur and Cathy Partridge and Ira Jones visited the campground, accompanied by District Ranger Joni Packard and Regional Pathologist Susan Hagle. While in Joni's words, the clearcut was "ugly," we are more deeply concerned with the regulations, standards and procedures that were not followed during implementation of this project.

ESA

Violations of the Endangered Species Act occurred when large diameter trees were felled within the PACFISH and INFISH Riparian Buffers Zones. Even with a stated reliance on the Programmatic Biological Assessment for Developed Recreation Site Maintenance (Joni Packard Pers. Comm.), Riparian Management Objectives were not met. Further, it was evident that tracked vehicles entered the streambed, and the riparian zones in at least two locations, a direct violation of PACFISH and INFISH standards.

The implementation of the project was in direct conflict with the Mitigation Measures contained within the Aquatics Report. According to that report, prepared by Karen Smith in May 2001 the implementation of the project would:

- 1- *"Minimize vegetation disturbance around stream channels during construction activities. Do not allow construction within 50' of the stream bank or channel, except at stream crossing sites. This includes campsite locations."*
- 2- *"Minimize tree removal within 100' of the stream channel (PACFISH guidelines for non-fish bearing intermittent streams). No trees should be cut within 20' of the channel."*(Smith, 2001. Page 1)

The Environmental Consequences/Effects Analysis section of the report goes on to say :
"Removing unhealthy trees from the stand to provide for camper safety and stand health would not affect aquatic habitats since no trees would be cut within 20' of the channel...All harvest activities proposed in the JJ's EIS [sic] have been designed to minimize impacts to the streams through PACFISH buffer retention...There would be no effects to fish species since there would be no measurable effects to aquatic habitats."(Smith, 2001. Page 2)

In the Biological Assessment & Biological Evaluation (Talbert et al, 2001), the finding was for “No Effect,” for Steelhead Trout and Bull Trout because mitigation measures would be followed, i.e. no bank alterations. In light of the implementation of the project, mitigation measures were not adhered to, therefore the finding of No Effect is wrong.

It is clear from the above citations that the proposed action differed significantly from the implementation. This raises concerns with regard to appropriate handling of NEPA procedures.

NEPA

According to District Ranger Joni Packard (Personal Communication, 2004) the decision memo and analysis of the project provided direction, or at least flexibility, to clearcut the campground. We dispute this finding.

As the citations, above, make clear, the analysis of the project did not provide for due consideration of the impacts of a clearcut in the project area. This is apparently due to the fact that the scope of the logging was dramatically increased during the Fall/Winter of 2003, without changes to the Decision Memo, and without any consultation with Resource Advisors (i.e. Fisheries Biologists, Wildlife Biologists, Hydrologists, etc.).

According to the Decision Memo signed by Cynthia Lane in 2002, one of the components of the project was “*removing dead and dying trees to reduce hazards and improve visitor safety*” (Decision Memo, 2002, page 3). During the field trip, it was made clear by Susan Hagle and Joni Packard that living (not dying) trees were removed due to the presumed post-logging spread of root disease, following soil disturbing activities.

Additional inconsistencies can be found in a memo dated August 16, 2003 from Susan Hagle to Forest Supervisor Larry Dawson, titled “Jerry Johnson hazard tree situation.” In this memo, Hagle states “*The upper part of the loop appears to be in far better shape than the lower and may require little additional tree removal.*” This indicates that, while the trees have had endemic levels of root disease, that the trees were not dead or dying, as delineated for removal in the Decision Memo.

As per direction in Forest Service Handbook 1909.15, National Environmental Policy Act Policies and Procedures:

“18.1 - Review and Documentation of New Information Received After a Decision Has Been Made. If new information or changed circumstances relating to the environmental impacts of a proposed action come to the attention of the responsible official after a decision has been made and prior to completion of the approved program or project, the responsible official must review the information carefully to determine its importance.”

According to Joni Packard (Personal Communication, 2004) no 18.1 management changes were conducted, nor was any information contained within the project file that indicated any further analysis of the impacts of increased logging.

The only available information that documents the change from the proposed hazard tree removal to the actual hazard tree removal, was a Tree Marking Guideline spreadsheet which recommended certain trees for removal. The original spreadsheet recommended 169 trees for removal, whereas the revised version recommended 815 trees, a nearly fivefold increase. Nowhere in the documentation is the rationale for this change explained.

According to Susan Hagle and Joni Packard, the change resulted from a field trip/analysis which took place at the site in December 2003, with Susan Hagle, Joni Packard, Cynthia Lane and others. Important here is the fact that Resource Advisors were not consulted, and that an 18.1 regulations were not followed.

Other Laws

In addition to violations of NEPA and ESA, we have questions about whether the project, as implemented, complied with the Wild and Scenic Rivers Act, National Forest Management Act, and even the State of Idaho's Forest Practices Act.

Contracting Concerns and Cost

The contracting timeline of the project raises questions in our mind about how and when decisions were made. According to the original contract, only 20 trees were identified for removal. The second contract called for the removal of all marked trees (approx. 815). If the original 2001 Decision Memo called for a clearcut, there is no reason that multiple service contracts would be necessary.

Further, the cost of approximately \$500,000 for the project seems a questionable expenditure in light of other needs and shortfalls on the Clearwater National Forest, especially given the estimated \$25,000 value of the 300,000 board feet of timber removed.

Finally, we understand that National Fire Plan funds were utilized to pay for some of this project. It is unclear to us, how this project suits the goals of the National Fire Plan. **[need to investigate]**

Recreation Planning

This situation demonstrates the need for better recreation planning. The Jerry Johnson Project was conducted in anticipation of pressures of the Lewis and Clark bicentennial. So far, many of the expectations have gone unfulfilled. Before the Clearwater National Forest engages in similar activities in the future (i.e. with Weitas Campground), we recommend a more comprehensive analysis of the recreation needs on the forest.

With the Forest Plan Revision under way, we are at an opportune juncture to ask questions and seek answers before unnecessarily spending limited recreation dollars.

Some basic recreation questions should be answered before you commit to upgrading or reconstructing new campgrounds and other recreation developments. We would be willing to work cooperatively with you in exploring what questions should be asked and answered before spending more taxpayer dollars on recreation.

Conclusion and Recommendations

According to Dr. Art Partridge, Professor Emeritus of Forest Resources (Pathology and Entomology) at the University of Idaho, Jerry Johnson Campground exhibited no evidence of active root disease. Similarly, he found no evidence of active root disease upon inspection of the Weitas Campground.

While Susan Hagle may dispute his assessment of both campgrounds, it points to the need for more rigorous assessments.

In terms of the hazard tree removal project planned for Weitas Campground, we suggest you reassess the need for the campground, the levels of root disease, and conduct recreation planning for the whole forest first. Further it is essential that Resource Advisors are closely involved in the design and implementation of these, and other, projects on the forest, especially in habitat for T,E&S Species.

With regards to consideration of applicable federal (i.e. ESA, NEPA, NFMA and WSRA) and state (FPA) laws, we strongly urge you to abide by them.

We strongly recommend that you reevaluate any existing projects where changes have been made to the prescriptions, and evaluate them to ensure that you comply with NEPA (i.e. through 18.1 modifications). In light of the expanded authorities for Categorical Exclusions, there may be significant confusion amongst your staff, which warrants additional review and rigorous inspection.

Sincerely,

Jonathan Oppenheimer
Idaho Conservation League

Larry McLaud
Friends of the Clearwater

CC: Joni Packard-FS, Gail Kimbell-USFS, Chief Bosworth-USFS, Dale Brege-NOAA, Clay Fletcher-USFWS, Winston Wiggins-IDL, Dr. Art Partridge and Ira Jones-NPT